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IN THE

Supreme Court of the United States

October Term, 1957.

No. 442.

MILDRED S. STINSON, as Administratrix of the Estate of A. BRUCE STINSON, Deceased, Suing as Such Administratrix,

Petitioner,

v.

ATLANTIC COAST LINE RAILROAD COMPANY;

Respondent.

MOTION UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES (JULY 1, 1954).

JOSEPH S. LORD, III,
CHARLES A. LORD,
SEYMOUR I. TOLL,
Counsel for Petitioner.

RICHTER, LORD & LEVY,
Of Counsel.

International, 711 So. 50th St., Phila. 43, Pa.

Supreme Court of the United States.

OCTOBER TERM, 1957.

No. 442.

MILDRED S. STINSON, AS ADMINISTRATRIX OF THE ESTATE OF A. BRUCE STINSON, DECEASED, SUING AS SUCH ADMINISTRATRIX,

Petitioner,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent.

MOTION UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES (JULY 1, 1954).

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States.

The motion of Mildred S. Stinson, as Administratrix of the Estate of A. Bruce Stinson, deceased, suing as such Administratrix, by her attorneys, respectfully represents that:

1. On November 18, 1957, this Court entered its Order, per Curiam, granting a writ of certiorari to the Supreme Court of Alabama, reversing the judgment of that Court and remanding "* * * for consideration of any grounds not disposed of on the first appeal; and, if none has merit, with instructions to reinstate the judgment entered on the jury verdict of June 12, 1953, awarding the petitioner damages of $46,600.00. * * *"

2. The within action arises out of an accident on August 6, 1951, as a result of which petitioner's decedent was killed.

3. Said action was originally tried in June, 1953,—more than four years prior to the grant of the petition for certiorari here.

4. Following the original trial, three years elapsed until the first appeal was finally decided by the Supreme Court of Alabama on June 21, 1956. For two years and three months of that time the case was pending before said Court. From June 21, 1956, until the second trial, five months elapsed and from then until the final decision on the second appeal seven more months elapsed.

5. On the original appeal to the Supreme Court of Alabama, that Court, although remanding for a new trial on the ground that the case should not have been submitted to the jury because of asserted insufficient evidence of proximate cause (a conclusion now reversed here), adverted to no other errors, nor did it reserve any asserted errors for later decision.

6. On the second appeal herein to the Supreme Court of Alabama, that Court said (App. to Petition for Writ of Certiorari, p. 25a):

> "* * * When the cause again came on for trial, the parties, by stipulation, submitted the cause to the jury on the *identical pleadings, testimony, evidence and rulings of the court as on the original trial.* The trial court properly gave the requested written affirmative charge for the defendant and plaintiff effected this appeal. * * *" (Emphasis added.)

7. Thus, the Supreme Court of Alabama had before it on the second appeal the same evidence and rulings that were before it on the first appeal.

8. The Final Judgment of the Supreme Court of Alabama, dated June 20, 1957 (App. to Petition for Writ of Certiorari, p. 27a), ordered:

> "* * * It Is Further Considered that in the *record and proceedings* of the Circuit Court *there is no error.*
>
> "It Is Therefore Considered, Ordered and Adjudged, that the judgment of the Circuit Court be and the same is hereby *in all things* affirmed. * * *" (Emphasis added.)

9. It is respectfully submitted that since there remain no grounds not considered on the first appeal, petitioner should not be subjected to any further delay and that this Court should now end the litigation since it is, on the face of the record, ended.

Wherefore, petitioner respectfully moves your Honorable Court to modify its order of November 18, 1957, by directing the entry of judgment for the petitioner upon the original verdict of $46,600.00.

Respectfully submitted,

Joseph S. Lord, III,
Charles A. Lord,
Seymour I. Toll,
Counsel for Petitioner.

Richter, Lord & Levy,
Of Counsel.

Certificate of Service.

I, Joseph S. Lord, III, one of the attorneys for Mildred S. Stinson, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on December 10, 1957, I served a full, true and correct copy of the foregoing Motion under Rule 35, by mailing, air mail, such copy in a duly addressed envelope with first class air mail postage prepaid to respondent's attorney of record, Peyton D. Bibb, Esquire, addressed as follows:

Peyton D. Bibb, Esquire;
1115 First National Bank Building,
Birmingham, Alabama,

and duly deposited the same in the United States mail box.

Joseph S. Lord, III,
Attorney for Mildred S. Stinson, Petitioner.